NO. 68

In the Supreme Court of the United States

OCTOBER TERM, 1943

THE UNITED STATES OF AMERICA, Appellant

vs.

CHARLES A. GASKIN

On Appeal from the District Court of the United States
For the Northern District of Florida

BRIEF FOR THE APPELLEE

INDEX

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BRIEF FOR THE APPELLEE

The Brief filed herein for the United States sufficiently states: Opinion Below; Jurisdiction; Question Presented; Statute Involved and Statement. (Pages 1-2).

The Appellee joins issue in the "Specifications of Errors to be Urged," 1 and 2, (Pages 3-4).

The Summary of Argument contained in said Brief is highly theoretical and presents the theoretical view sought to be imposed in the argument contained in said Brief. (Pages 6-25).

ARGUMENT FOR APPELLEE

ACTUAL LABOR SUCCEEDING AN ARREST TO A CONDITION OF PEONAGE IS NECESSARY TO COMPLETE THE CRIME OF ARREST TO A CONDITION OF PEONAGE WITHIN THE PURVIEW OF SECTION 269, OF THE CRIMINAL CODE. INVOLUNTARY SERVITUDE IS A NECESSARY AND INDISPENSABLE ELEMENT TO BE CHARGED IN AN INFORMATION OR INDICTMENT PREDICATED ON SAID SECTION 269, OF THE CRIMINAL CODE.

The Statutory Proceedings

In order that we may consider the language of the Criminal Code, it is necessary that we quote the Statute involved in this proceedings in full, for the purpose of allowing the same to be considered in its entirety and not from a theoretical interpretation of any one word thereof.

Section 444, Title 18—Criminal Code and Criminal procedure, United States Code, same being Criminal Code, Section 269, provides as follows:

> **"Holding or returning persons to peonage.** Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than, $5,000.00 or imprisoned not more than five years, or both. (Mar. 4, 1909, ch. 321, Sec. 269, 35 Stat. 1142.)"

It will be observed that the title to this Act includes "Holding or Returning Persons to Peonage" and no mention is made about **arresting,** sought to be injected in this appeal.

We invite the Court's attention and consideration to the meaning of the signal word arrests, arrested in its broad meaning as compared with the words arrests, arrested, to a condition of peonage. A person may be arrested or subjected to an arrest for any offense, in which event the arrest would come within the ordinary definition covering this word. But, when a person is "Arrested to a condition of peonage," it is necessary that he be subjected to the elements defining the word peonage as well as being subjected to arrest under its ordinary meaning. And, in view of this added word peonage in this particular arrest, we submit that the subject, of necessity, must be "arrested to a condition of peonage", and, that involuntary servitude is a necessary and indispensable element contained in the purview of this offense.

CONSTITUTIONAL INTERPRETATION: The Thirteenth Amendment to the Constitution of the United States, we submit, sought to, and has effectively abolished the practice of slavery and involuntary servitude theretofore existing and practiced in the several States prior to its adoption December 18th, 1865, and this Amendment, in view of the holdings of this Honorable Court and other Courts, hereinafter cited, cannot now be expected to enlarge and extend the provisions of the Legislation enacted by Congress to enforce the provisions of said Amendment as is contained in Sec. 269, of the Criminal Code to include an entirely new offense not therein included. And, the police power of the several states cannot be abolished, and under the facts contained in the allegation of the indictment as shown by the statement in the Brief of the United

States, (pages 2-3), might be construed to mean: false arrest, assault and battery, or even kidnapping, but in no event can it be construed to change the offense of peonage as contained in the provisions of Sec. 269, of the Criminal Code. And, the several states adequately cover either of these offenses in their own Criminal Statutes or Criminal Codes.

We submit that this question should not only be considered theoretical, but that the entire Section must be given practical construction:

> "Primarily, constitutional interpretation is a question of ascertaining the meaning of the words used. No word or clause can be rejected as superfluous or meaningless, but each must be given its due force and appropriate meaning. Knowlton v. Moore, 178 U. S. 41,87 (1900)."

> "The Constitution must receive a practical construction," Union P. R. Co. v. Peninston, 18 Wal. 5, 31 (1873).

> "Words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged." Pollock v. Farmers Loan & Trust Co., 158 U. S. 618 (1895).

> "Consistent with the power of Congress to regulate commerce among the States, the States possess, because they have never surrendered, the power to protect the public health, the public morals, and public safety, by any legislation appropriate to that end which does not encroach upon rights guaranteed by the national Constitution, nor come in conflict with acts of Congress passed in pursuance

of that instrument." Missouri, K & T. R. Co. v. Haber, 169 U. S. 613, 628 (1898).

"The principal that a State may enact local laws under its police power in the interest of the welfare of the people," ***** Lemke v. Farmers' Grain Co., 258 U. S. 50, (1922).

"The first case in which the Supreme Court was called upon to give construction to this amendment was the Slaughter House Cases." **** With microscopic search (to) endeavor to find in it (the amendment) a reference to servitudes, which may have been attached to property in certain localities, requires an effort **** That a personal servitude was meant is proved by the use of the word, 'involuntary' which can only apply to human beings **** It is the denunciation of a condition and not a declaration in favor of a particular People" 16 Wal. 36, 67, 69, 72 (1873). 203 U. S. 1, 16 (1906).

"It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person (a mere individual) may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theater, or deal with in other matters of intercourse or business."

Civil Rights Cases, 109 U. S. 3, 24 (1883), holding that secs. 1 and 2 of the act of March 1, 1875, (penalizing the denial of such privileges by "any person within the jurisdiction of the United States") were not supported by the 13th Amendment. See also Butts v. Merchants & M Trans. Co., 230 U. S. 126 (1913).

It was settled in the Slaughter House Cases,

above noted, that the servitude referred to in the amendment is personal. "All understand by these terms (slavery and involuntary servitude) a condition of enforced compulsory service of one to another." Hodges v. United States, 203 U. S. 1, 16 (1906).

The amendment was not intended to introduce any novel doctrine with respect of such services "and certainly was not intended to interdict enforcement of those duties which individuals owe the State, such as services in the Army, militia, on the jury, etc.". Butler v. Perry, 240 U. S. 328, 333, (1916).

CODE CONSTRUCTION AND INTERPRETATION: We do not admit that the question presented in this Appeal is entirely without interpretation by this Court. Many cases touching directly or indirectly upon this subject have been considered by the Courts, from which it is a well established principle of law that involuntary servitude is a necessary and indispensable element in the offense of "arrest to a condition of peonage", as intended by the framers of the 13th Amendment of the Constitution and defined by Sec. 269 of the Criminal Code. And it is not considered necessary to elaborate or discuss the holdings of the Courts with a theoretical aspect, but submit them in the plain language used in interpreting the practical construction of this Law. We submit the following excerpts:

"Peonage is status or condition of compulsory service based on indebtedness of peon to master — Clyatt vs. U. S. (Fla) 197 U. S. 207."

"Condition of Peonage," to hold person to which is made crime, is condition of forced servitude by which servitor is restrained of his liberty and compelled to labor in liquidation of some debt or obli-

gation, either real or pretended, against his will." Peonage Cases, (Ala) 123 Fed. 671.

"Peonage" is a form of "involuntary servitude" within the meaning of U.S.C.A. Court. Amend. 13, Sec. 444 of Title 18, and this Section abolishing and prohibiting peonage and penalizing a person who holds any one to a condition of peonage are an appropriate implementation of said Amendment. Taylor vs. State (Ga) 315 U. S. 25."

"Peonage" is the status or condition of compulsory service in payment of an alleged indebtedness by the peon to his Master." U. S. vs. Cole 153 Fed. 801.

A forcible seizure of one's person without any pretense of taking him into legal custody does not amount to an "arrest." State vs. Beckendorf (Utah) 10 P (2nd) 1073.

U. S. vs. Eberhardt et al, 127 Fed. 252, Circuit Court, N.O.G.Ga. the Court in discussing the statute in question, said: "The purpose of this Act, as stated, was to abolish this system of peonage, and to render null and void all acts, laws, resolutions, orders, regulations, or usages in New Mexico or elsewhere which established or which sought to establish this system. THE PENAL PART OF THE ACT WILL NOT BE ENLARGED BEYOND THE SCOPE AND PURPOSE OF THE ACT AS ABOVE INDICATED. THE PENALTY IS FOR HOLDING UNDER, OR FOR ARREST OR RETURNING TO, THIS CONDITION OF PEONAGE. A PERSON MUST HAVE BEEN HELD UNDER THIS SYSTEM, OR ARRESTED AND RETURNED TO IT; THAT IS, TO A PRE-EXISTING CONDITION OF PEONAGE.

IN RE: Peonage Charge, 138 Fed. 686 (Circuit Court N. D. Fla) the Court in charging the grand jury as to the law of peonage and discussing the statute under which this indictment is found, said among other things; "That which is contemplated to be prohibited by the statute is compulsory service to secure the payment of a debt." and further said:

"But peonage, however created, is compulsory service — involuntary servitude,"; and

In Taylor vs. U. S. 244 Fed. 321, CCA 4th Cir. the Court referred to Clyatt vs. U. S. 197 U. S. 207, 25 Sup. Ct. 429, 49 L. Ed 726, the Supreme Court of the U. S. in defining the term "Peonage", said the following:

"What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness, as said by Judge Benedict, delivering the opinion in Jaremillo vs. Romero, 1 N.M. 190, 194: 'One fact existed universally; all were indebted to their Masters. This was the lard by which they seemed bound to their masters service.' Upon this is based a condition of compulsory service. That which is contemplated by the statute is compulsory service to secure the payment of a debt."

In the dissenting opinion in this case, Circuit Judge Woods had the following to say:

"Cook was never actually in a condition of peonage; that is, working under compulson for Taylor in discharge of a debt. An expression in Clyatt vs. U. S. Supra. Might possibly be construed

as an intention that the crime is complete when an arrest is made for the purpose of placing one in a condition of peonage without actually accomplishing the purpose. But the point was not involved nor decided, and we are free to hold otherwise. It seems clear that the peonage statutes do not make criminal an arrest with the purpose of placing a man in a condition of peonage without the actual accomplishment of the purpose. The crime denounced is in fact holding one in a condition of peonage, or returning one to a condition of peonage, or by means of arrest placing one in a condition of peonage, who may or may not have been a peon before. Since the arrest did not result in making Cook a peon or returning him to the condition of a peon, neither of the defendants could be convicted under the separate indictments against them under Section 269 (now 444 of Title 18 U.S.C.N.) on the mere proof that they had him arrested for the purpose of compelling him to become a peon.

It may be well briefly to note the arguments submitted on behalf of he Appellant and to demonstrate their failure to compel the conclusion insisted upon by the United States. These arguments will be considered in the order in which they appear in Appellant's "Summary of Argument" (Appellant's Brief, P. 4):

I. **That the Purpose of the Thirteenth Amendment to destroy peonage "root and branch" demands a holding in accordance with the Government's contentions:**

Concededly that was the purpose of the Amendment, and concededly Congress was endeavoring to further that purpose in passing the mentioned Act. But the destruction of **Peonage** was **all** it sought to do. It did

not seek to destroy false arrest, assault and battery, or other matters within the province of the police powers of the State. It sought to destroy "arrest" only when that arrest was followed by peonage.

The defendant's right to have a penal statute strictly construed is too well established to require any effect to bolster it here. The Act defines the crime as consisting of an "arrest *** to a condition of peonage". If Congress had intended to prescribe as a crime "an arrest for the purpose of placing one in a condition of peonage", it had only to say so.

It is submitted that the purpose of the Thirteenth Amendment will scarcely be served by depriving this defendant of his liberty under an indictment that fails to allege any act plainly defined as a crime by the Congress.

II. **That the "arrest" contemplated by the statute is complete when the seizure is made:**

Were this so, the phrase "to a condition of peonage" would deteriorate into the merest surplusage, and the rule against the rejection of words as "superfluous or meaningless" would be defied.

To "return" one to a condition of peonage inevitably connotes (1) a former condition of peonage, (2) a release from it, and (3) a restoration to it.

Just as obviously an "arrest to a condition of peonage" connotes (1) an arrest, and (2) a placing in a condition of peonage following the arrest.

III. **Legislative History:**

Appellant's discussion of what it refers to as the "legislative history" of the statute is interesting but unenlightening. In the last analysis, it merely apprises us of the views of Senator Sumner on the question of slavery and involuntary servitude. The views of the Gentleman from Massachusetts were already quite well known

IV. **The restrictive effect of the district court's interpretation.**

Under this heading, Appellant complains that "The effect of the district court's interpretation is to absolve from punishment everyone who 'arrests' . . . if through some extraneous circumstance, peonage does not actually follow the arrest even though fully intended."

The Government's zealous counsel is, in effect, complaining that some persons who wished to commit a crime might fail in their efforts, thus denying vengeance to the United States.

As well complain that a would-be murderer cannot be hanged if his victim survives. As well complain that a kidnapper can not be convicted in Federal Court if his "loot" escapes before a State line is crossed.

Such is not the spirit or letter of our criminal statutes. Certain meticulously defined acts are made crimes by the Congress. Those who commit them are indictable. Those who fail to commit them are not - - - whether their failure is a want of intent, a change of heart, or mere physical frustration.

However loudly the Government's counsel may bewail the loss of a victim, there is no law to punish a man for what is in his heart until it manifests itself in a completed act. And an arrest to a condition of peonage is not a completed act until the arrestee is, in fact, a peon.

CONCLUSION:

In view of the well established principal of Law holding that all constitutional provisions must be liberally construed by the Courts, and that all Code or Statutory Provisions contained in Acts of Legislature or Congress must be strictly construed in favor of the defendant, we submit that in this proceedings an attempt is now being made to enlarge an Act of Congress more than fifty years old.

Under the authorities cited herein and for the reasons contained in this Brief, we respectfully submit that the District Court's judgment sustaining the Demurrer to the original indictment in this proceedings was a correct interpretation and construction of the term, "arrest to a condition of Peonage" as used in Section 269 of the Criminal Code; and that judgment of the District Court heretofore entered herein should be affirmed

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October, 1943

SUPREME COURT OF THE UNITED STATES.

No. 68.—October Term, 1943.

The United States of America, Appellant, vs. Charles A. Gaskin.	Appeal from the District Court of the United States for the Northern District of Florida.

[January 3, 1944.]

Mr. Justice Roberts delivered the opinion of the Court.

An indictment was returned against the appellee in the District Court for Northern Florida which charged that he arrested one Johnson "to a condition of peonage," upon a claim that Johnson was indebted to him, and with intent to cause Johnson to perform labor in satisfaction of the debt, and that he forcibly arrested and detained Johnson against his will and transported him from one place to another within Florida. There was no allegation that Johnson rendered any labor or service in consequence of the arrest. From a judgment sustaining a demurrer,[1] the United States appealed.[2]

The charge is laid under § 269 of the Criminal Code,[3] which is: "Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined . . . or imprisoned" . . . .

The District Court held that the statute imposes no penalty for an arrest with intent to compel the performance of labor or service unless the person arrested renders labor or service for a master following the arrest.

We think this was error. Section 269 derives from § 1 of the Act of March 2, 1867,[4] which abolished and prohibited the system known as peonage in any territory or state, nullified any law, ordinance, regulation, or usage inconsistent with the prohibition,

[1] 50 F. Supp. 607.

[2] Pursuant to the Criminal Appeals Act, 18 U. S. C. § 682.

[3] 18 U. S. C. § 444.

[4] 14 Stat. 546.

and added criminal sanctions in the language now constituting § 269. The Act was passed further to implement the Thirteenth Amendment and is directed at individuals whether or not acting under color of law or ordinance.[5]

The section makes arrest of a person with intent to place him in a state of peonage a separate and independent offense. It penalizes "whoever holds, arrests, returns, or causes to be held, arrested, or returned . . . any person to a condition of peonage". The language is inartistic. The appropriate qualifying preposition for the word "holds" is "in". An accurate qualifying phrase for the verb "arrests" would be "to place in or return to" peonage. But the compactness of phrasing and the lack of strict grammatical construction does not obscure the intent of the Act. Years ago this Court indicated that the disjunctive phrasing imports that each of the acts,—holding, arresting, or returning,—may be the subject of indictment and punishment.[6] We think that view is sound apart from any consideration of the legislative history of the enactment. But when viewed in its setting no doubt of the purpose of the statute remains.

The Act of 1867 was passed as the result of agitation in Congress for further legislation because of the use of federal troops to arrest persons who had escaped from a condition of peonage.[7] The first section abolished and prohibited peonage and made certain practices in connection therewith criminal. The second section imposed a duty on all in the military and civil service to aid in the enforcement of the first, and provided that if any officer or other person in the military service should offend against the Act's provisions he should, upon conviction by a court martial, be dishonorably dismissed from the service.[8] It is plain that arrest for the purpose of placing a person in or returning him to a condition of peonage was one of the evils to be suppressed.

The appellee invokes the rule that criminal laws are to be strictly construed and defendants are not to be convicted under

[5] Clyatt v. United States, 197 U. S. 207, 218; Bailey v. Alabama, 219 U. S. 219, 241; United States v. Reynolds, 235 U. S. 133; Taylor v. Georgia, 315 U. S. 25.

[6] Clyatt v. United States, supra, 218, 219.

[7] Cong. Globe, 39th Cong., 2d Sess., Vol. 74, Pt. 1, pp. 239-241. *Ibid.* Vol. 76, Pt. 3, p. 1571. Senate Report No. 156, 39th Cong., 2d Sess., pp. 325, 326.

[8] This section became § 5527 of the Revised Statutes and was repealed and reenacted in part by § 270 of the Criminal Code. See 18 U. S. C. § 445.

statutes too vague to apprise the citizen of the nature of the offense. That principle, however, does not require distortion or nullification of the evident meaning and purpose of the legislation.[9]

The judgment is reversed.

[9] Gooch v. United States, 297 U. S. 124, 128; United States v. Giles, 300 U. S. 41, 48; United States v. Raynor, 302 U. S. 540, 552.

Mr. Justice MURPHY, dissenting.

We are dealing here with a criminal statute, the penalties of which circumscribe personal freedom. Before we sanction the imposition of such penalties no doubts should exist as to the statutory proscription of the acts in question. Otherwise individuals are punished without having been adequately warned as to those actions which subjected them to liability.

It is doubtful whether an arrest not followed by actual peonage clearly and unmistakably falls within the prohibition of § 269 of the Criminal Code. The court below, at least, felt that the statute did not cover such a situation. Other judges have expressed similar doubts. *United States* v. *Eberhart*, 127 F. 252; dissenting opinion in *Taylor* v. *United States*, 244 F. 321, 332, 333. And in order to reach the opposite conclusion, this Court labels the statutory language as "inartistic" and as lacking in "strict grammatical construction." It then proceeds to rewrite the statute, in conformity with what it conceives to have been the original intention of Congress, so as to penalize "whoever . . . arrests . . . any person for the purpose of placing him in a condition of peonage." I cannot assent to this judicial revision of a criminal law. Congress alone has power to amend or clarify the criminal sanctions of a statute.

Apologia for inadequate legislative draftsmanship and reliance on the admitted evils of peonage cannot replace the right of each individual to a fair warning from Congress as to those actions for which penalties are inflicted. Punishment without clear legislative authority might conceivably contain more potential seeds of oppression than the arrest of a person "to a condition of peonage."